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THE DESTRUCTIVE EFFORT TO COMBAT MONEY LAUNDERING, TAX EVASION AND TERRORIST FINANCING

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If there is a demand for a good or service, whether legal or not, it will be supplied by someone. This basic fact of life is understood by most people, except for those who believe in utopia or are so power-possessed that they deny reality. All too often, attempts by government to ban or regulate an activity make the situation worse.

In America in the 1920s, there was prohibition on the production and consumption of alcoholic beverages. The law did not stop people from drinking or producing beer, wine and hard spirits. It merely drove the activity underground and fueled the growth of organized crime – and was hence repealed. Similarly, the "war on drugs" over the past several decades has been a dismal failure – despite the expenditures of hundreds of billions of dollars and the loss of tens of thousands of lives.

The most recent global waste of money and life is the "war" on the vague crime of "money-laundering." The anti-money laundering zealots claim the war is needed to stop global tax evasion, drug dealing and terrorist finance. Despite, again, the hundreds of billions of dollars spent on the effort and the many lives lost, there is scant evidence that tax evasion, drug dealing, or terrorism have been significantly reduced, by anti-money laundering regulations.

What has happened is that the basic human right of financial privacy has been destroyed for perhaps billions of people who are now at risk from corrupt governments and criminals. International financial flows are more costly, and global investment is lessened, with the attendant loss of jobs and economic growth. Banking services have been reduced or eliminated for hundreds of millions of people.

In sum, the global effort is a fool's errand which has only served to enrich those who are broadly involved in "financial compliance" in one form or another. Those in government, including those who are employed by international organizations (who have tax-free salaries as a side benefit), love all of the anti-money laundering laws and regulations, because it enhances their power even at the expense of the liberty of the citizens.

The U.S. did not have a federal anti-money laundering law until 1986. The law created a whole new occupation – legal and illegal money-launderers (MLs). These new entrepreneurs have become increasingly sophisticated in developing ways to move and hide criminal money and in finding ways for their clients to avoid taxes.

Every time the global financial regulators come up with a new rule, with more paperwork requirements, the MLs find legal or illegal ways around it. The only thing we can say for sure about the anti-money laundering laws and regulations is that the cost of financial services has greatly increased, both for the honest and the dishonest. And there has been an explosion in the number of jobs for "compliance officers," tax lawyers, and tax accountants (all non-productive occupations).

In January of this year, the Center of Law and Globalization (a partnership of the University of Illinois College of Law and the American Bar Foundation) released its report "Global Surveillance of Dirty Money: Assessing Assessments of Regimes To Control Money-Laundering and Combat the Financing of Terrorism."

Despite the fact that the authors had the full cooperation of the International Monetary Fund (IMF) and the Financial Action Task Force (FATF), the conclusions are very damning (even though being written in polite, bland, bureaucratic language).

One of the authors of the report, Professor Terence Halliday, stated: "We find that the current system is pervasive and highly intrusive but without any evidence of tangible effect." As reported in the Wall Street Journal (February 7, 2014), the authors are quoted as saying that the IMF and FATA have built a "Potemkin village" and a "paper reality" based on "a plausible folk theory," rather than data and evidence of what works.

The study authors found that "FATF did not articulate its objectives sufficiently precisely for reliable evaluations. …The FATF and the IMF assessments focused almost entirely on formal compliance with FATF standards and whether countries appeared to implement programs. Very little emphasis, if any, was given to program effectiveness and outcome effectiveness. …No credible scientific evidence has yet been presented that there is a direct relationship between installation of effective AML/CFT [Anti-Money Laundering and Combating the Financing of Terrorism] regimes and the IMF mandates to produce domestic and international financial stability."

The report also criticized the lack of risk analysis, and systematic quantitative and qualitative data to provide defensible bases for recommendations. The authors discussed the lack of realism by the IMF and FATF in trying to compel all countries to adopt the same standards while ignoring their ability to do so. "The AML/CFT system confronts the seemingly intractable problems of all international institutions that seek to promulgate global standards by countries whose circumstances vary enormously."

The report also heavily criticized the absence of efforts to assess either the costs or benefits. “The FATF system has proceeded as if it produces only public and private goods, not public or private ‘bads’ or adverse by-products against which the ‘goods’ have to be weighed. …There needs to be more open acknowledgement of actual and potential financial costs of AML/CFT controls, their potential misuse by authoritarian rulers, and possible adverse effects on populations that rely on remittances and the informal economy, as well as potential negative impacts on NGOs and parts of civil society.”

The IMF, FATF and the OECD are not the only promulgators of destructive anti-money laundering regulations. A number of European governments and the EU itself are a major source of costly and ineffective regulation; but, not to be outdone, the U.S. has developed perhaps the most destructive law and regulation ever conceived, called the Foreign Account Tax Compliance Act (FATCA).

In a brazen act of U.S. financial imperialism, FATCA requires all foreign financial firms to report to the U.S. Treasury on any U.S. taxperson (i.e., citizen, green-card holder, and many others) they may have as a client. There are both civil and criminal penalties for non-compliance. As could be logically expected, this Act has caused great anger and hostility towards the U.S. by both foreign financial firms and many of their governments. In an age of multiple citizenships, there is no way for a foreign bank or financial firm to know with certainty whether or not any customer may be a U.S. tax person.

The Treasury Department and IRS have failed to do a cost-benefit analysis, which is direct violation of an Executive Order by President Obama (but, as can be seen with ObamaCare and other laws and regulations, the Obama Administration feels free to ignore its own executive orders and laws). FATCA is only estimated to raise $8.7 billion over the next ten years, but the compliance costs and the loss of foreign capital investment resulting from the law is likely to cost several orders of magnitude over the expected revenue – economic madness.

Even though FATCA will not formally be the law until July of this year, many overseas Americans now find it impossible to open bank accounts. Many non-American banks are very explicit that they now want nothing to do with Americans because of the costs of the regulations and the potential personal and corporate liabilities stemming from the Act. In addition, basic privacy rights of millions of people will be violated as a result of the information sharing provisions of the Act, and many who have no knowledge of the draconian paperwork requirements or who merely make innocent mistakes in reporting, while owing no taxes, will be subject to crushing fines and compliance costs.

The Act is so bad, that even the IRS’s own Taxpayer Advocate Service has produced a report “Reporting Requirements: The Foreign Account Tax Compliance Act Has the Potential to be Burdensome, Overly Broad, and

Detrimental to Taxpayer Rights," which is highly critical of FATCA. The Republican National Committee has called for repeal of FATCA, and Senator Rand Paul has proposed legislation for repeal.

Despite the overwhelming evidence of the destructive effect of FATCA on individual Americans living overseas, on friendly foreign institutions, and on the privacy rights of all Americans, as well as the potential loss of needed foreign capital for job creation and economic growth, the Obama Administration continues on with this lunacy as if nothing is wrong. Such is the arrogance and detachment from reality for many in the political class in Washington and the capitals of Europe.

Many of those who advocate draconian and destructive anti-money laundering laws and regulations do not appear to care about those they hurt, which are often the poor and innocent. It is well known that "remittances" are very effective forms of foreign aid by those who have left their home countries to seek employment elsewhere and who then send money back to their families or friends. The amount of remittances greatly exceeds all of the global aid distributed by rich countries to poor countries – and, unlike government aid, most of it goes directly to help the needy or to create new entrepreneurial businesses. But the global war on money laundering by the rich countries has greatly increased the cost of sending these remittances and, in some cases, makes it almost impossible to accomplish legally.

The real world example of Somalia illustrates part of the problem. Many Somalians have left to seek work in Europe, the Americas and in more prosperous parts of Africa. Many of these Somalian workers send money back to their families, and these remittances are estimated to be several billion dollars – a significant portion of the GDP of Somalia. Because it is a failed state, there are no banks in Somalia. Most Somalians use money transfer services as the least costly and most reliable way to send money back home.

The Western governments are making it increasingly difficult for these legitimate money transfer services to have bank accounts with international banks, which the transfer services, of course, need to facilitate their money transfer businesses. The legitimate services do try to comply with most of the "know-your-customer" and other anti-money laundering regulations. But, given the fact that many of their customers only have temporary residences and a lack of many formal documents, it is impossible for them to meet the new international standards. If these services are shut down, the Somali workers are going to find other ways of sending funds back home. These alternatives will be more costly, less reliable, and more easily compromised by terrorists and criminals.

Too many of those who have signed up for the war against money laundering are either obsessed with increasing their own power or have a delusional, utopian vision, where the rights of the individual and liberty are not as important as the "collective." The war on money laundering has failed for the last quarter of a century because it had not prevented terrorists, drug dealers and assorted criminals from transferring money around the world. Nor has it

stopped people who believe (legitimately or illegitimately) that governments are taking too much of their wealth from trying to find ways to protect it.

What it has done is greatly increased the cost of transferring money by innocent people and businesses, greatly reduced access to banking services for millions, destroyed personal and financial privacy for much of the world's population, and enhanced the ability of government officials around the world to abuse their own citizens.

It is time to repeal all of these laws and regulations – because they are destructive and cannot be made to work, no matter how draconian they become.

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